

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1372 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? -
 2. To be referred to the Reporter or not? -
 3. Whether Their Lordships wish to see the fair copy of the judgement? -
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? -
 5. Whether it is to be circulated to the Civil Judge?
-

LALITABEN WD/O HIRALAL G.

Versus

DEPUTY SECRETARY

Appearance:

MR MI HAVA for Petitioners

MR ST MEHTTA, A.G.P. for Respondent No. 1

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 17/08/98

ORAL JUDGEMENT

1. By means of this petition, the petitioners have sought for quashing the order dated 21st January 1992 of the Jt. Secretary, Revenue Department, Government of Gujarat, bearing No. ULC/3487/6390/1741/V.3 and the judgment and order dated 30-12-85 of the Dy. Collector, (Competent Authority) in case No. ULC-6(F) 5/1200 Surat city, 5/1193, Surat City/5/1181 Surat City, M.S.

Building C Block, First Floor, Nanpura, Surat bearing No. ULC 6/1/5/1200 Surat City 5/1993 and 5/1181 and decided on the Form No. 1 filed u/s 6 of the Urban Land (Ceiling and Regulation) Act, 1976. (Hereinafter referred to as the ULC Act). The particulars of the properties are as under:-

Sr. No.	Particulars of Property	Area Sq.mt.
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1.	2.	3.
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1.	Surat nondh 1415/A & 1415/B 1447-01	
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2.	Surat Nondh as 4207, 4279, 4296 and 4286	402-17
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3.	Ujjain 1/936	4412-89.
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6463-07

2. The competent authority excluded the property no. 2 in determining the holding of the petitioners and the competent authority counted the properties no. 1 and 3. When the Revision was filed before the State Government against the decision of the Joint Secretary, Revenue Department, Gujarat State, took a decision that the properties at Sr. No. 1, 2 and 3 total holding is 6463-07 sq. mt. and deducting retainable lands for 3 units : 4500-00 sq.mt. declared 1963-07 sq. mt. as surplus land, in exercise of powers u/s 34 the order of the competent authority was cancelled and 1963-07 sq. mt. land was declared as excess vacant land. Regarding the property no. 1, the learned Counsel for the petitioner submitted that the said properties have been occupied by them as tenants and the same do not belong to them. But Vasantbhai Fakirabhai is the owner of the property. It is a constructed piece of land used for industrial purpose which cannot be included in the holding of the tenant. The same was used for factory purpose and the petitioners cannot be the holder of that property. Section 2 (1) of the Urban Land (Ceiling and Regulation) Act, 1976 defines the word "to hold" with its grammatical variations, in relation to any vacant land means - to own such land or to possess such land as owner or as tenant or as mortgagee or under an irrevocable power of attorney or under a higher-purchaser agreement

or partly in one of the said capacities and partly in any other of the said capacity or capacities. Explanation - Where the same vacant land is held by one person in one capacity and by another person in another capacity, then, for the purpose of this Act, such land shall be deemed to be held by both such persons.

3. Learned counsel for the petitioners submitted that the tenant, as referred to above, is in connection with the lease property granted by the State Government. In case any person takes any constructed property of land for specific purpose or for a specified period of one year, two years, three years it cannot be deemed to have hold that property in the eye of law. Second submissions in this respect is that the entire area is a constructed area in view of the provisions of Section 2 (q) (ii) of the ULC Act, in any area where there are building regulations, the land occupied by any building which has been constructed before or is being constructed on, the appointed day with the approval of the appropriate authority and the land appurtenant to such land, will not be deemed to be a vacant land. Even it is undisputed that the property described at Sr. No. 1 is a constructed property for which the petitioners are seeking for it. But they are only tenants of the property. For the engagement of business they were holding that property only for a specific purposes and they cannot be deemed to have holding that property under the provisions of the law. As it is undisputed fact, I do not want to go into this controversy whether he was holding property as a tenant within the meaning of Section 2 (1) of the ULC Act. It is not disputed that the property which is a constructed property which does not fall within the meaning of Sec. 2 (q) (ii) of the ULC Act as it is being constructed area which has to be excluded in view of the statutory provisions as stated above.

4. In regard to the property at Sr. No. 2 learned counsel for the petitioners submitted that this property was excluded by the competent authority by determining the holding u/s 4 (9) of the ULC Act. But the Jt. Secretary has included in calculation which is not in accordance with law inasmuch as it is also a constructed residential house property. It is not pointed out by the Jt. Secretary that besides the constructed house property there was any vacant land in this portion. Only it is mentioned that the property being in Surat nondh No. 4207, 4296 and 4297 being constructed residential house property is required to be included u/s 4 (9) of the ULC Act in the holding of the petitioner. That

cannot be taken away by the Government.

5. The property noted at Sr. No. 2 being constructed area is not a vacant land in view of the provisions of Section 2 (q) (ii) of the ULC Act and hence not to be included as vacant land.

6. So far as the property noted at Sr. No. 3 is concerned, this property is entered into by Entry No. 936 in Ward No. 1 of Ujjain which is admeasuring 4412.89 sq.mt. in area in which the constructed area is 1982.46 sq. mt. Learned counsel for the petitioner submitted that this area of 2430.43 sq. mt. contains appurtenant land which is provided to the land holder u/s 2 (g) (i) and (ii) of the ULC Act to the extent of 500 plus additional 500 sq. mt. and the petitioners are entitled for 4500 sq.mt. u/s 4(1)(c) of the ULC Act which is less than the prescribed limit. It is submitted on behalf of the petitioners that the land admeasuring 2430.43 sq. mt. is less than 4500 sq.mt. Hence, the holding of the petitioner is within the prescribed ceiling.

7. Learned Counsel for the petitioner relied upon the case of Mira Gupta Vs. State of West Bengal, reported in AIR 1992 SC 1567 and two decisions of this Court delivered in Special Civil Application No. 963 of 1987 dated 28th January, 1987 and Special Civil Application No. 5734 of 1990 dated 31-1-94. The competent authority was justified in excluding the constructed residential house which is mentioned at Sr. No. 2. The Jt. Secretary has committed grave error in regard to the properties mentioned at Sr. No. 1, 2 and 3 and the holding of the petitioners is within the prescribed ceiling and hence the petitioners cannot be held for any surplus land or excess land under the provisions of the ULC Act.

8. In view of the above two judgments of this Court it is hereby declared that the petitioners' holding is not in excess of the ceiling area under the ULC Act.

9. The impugned order of the State Government is not sustainable in the eye of law. Accordingly, this petition is allowed and the judgment and order dated 21-1-1992 of the Jt. Secretary, Revenue Department, Government of Gujarat is hereby quashed and set aside and the order passed by the competent authority is affirmed. Rule is made absolute, with no order as to costs.